IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1826 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN KALAJI KANAJI

Versus

STATE OF GUJARAT

Appearance:

MR DP KINARIWALA for Petitioner

NOTICE SERVED BY DS for Respondent No. 1, 3

GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/03/2001

ORAL JUDGEMENT

The petitioner is aggrieved by the order passed by the District Collector, Ahmedabad in LB\Review Case No.8/98 on 28/1/1999(annexure "A"). By virtue of that

order, the District Collector in exercise of revisional powers under section 211 of Land Revenue Code has set aside the order passed by the City Mamalatdar, Ahmedabad in RTS Case No.3836/97 on 1.10.1997.

2. The whole dispute spins around the Entry No.809 made on 2.6.1956 in respect of Survey No.157/1/1 whereby the rights of the land owner/occupier were restricted against mortgage, gift, sale or tenancy of the said land. The said entry was enquired about by the Mamalatdar by holding an inquiry and the entry was cancelled. The learned District Collector took that order in revision and cancelled the said order whereby the entry of restricted tenure/new tenure again came into effect. The Collector has observed that the challenge to the said entry is after long spell of about 40 years. That the said entry is in the record for a long time which was made on the basis of a circular and, therefore, it could not have been re-examined by the Mamalatdar. The objection raised by the petitioner to such entry is not within reasonable period and, therefore, the impugned order was passed.

3. The case of the petitioner is that he was unaware about the erroneous entry of new tenure. It is also contended that the entry is made only on the basis of a circular issued by the Government and that there is nothing to indicate that the land carried a restricted tenure putting a restriction on its alienability and/or partibility. There is no material to indicate that the grant was restricted. Under the circumstances, the petitioner has preferred this petition.

4. The learned advocate Mr.A.J.Patel appearing for the petitioner submitted that the Mamalatdar has made an inquiry on the basis of a circular issued by the Government. The circular was issued by the Government as it was found that there is no basis for the entry restricting the alienability or partibility of the land. Mr.Patel has submitted further that even endorsement in the record of the land being of new tenure by itself would not indicate that the land is inalienable and/or impartible and, in such a situation, when the question arises, the authority concerned is required to take a decision on the question of alienability and/or partibility of the land after making due inquiry. To support his case, Mr.Patel has relied upon the circulars issued by the Government and submitted that these circulars have been overlooked by the learned Collector . Mr.Patel has placed reliance on certain decisions of this court squarely governing the facts of the present case.

5. Ms.Punani, Ld.AGP appearing for the respondent-authority relied heavily on the affidavit-in-reply. She has submitted that the objection is raised after a lapse of 41 years. From the very beginning the land is being termed as "new tenure". It is only a clarification that is made by the impugned entry and, therefore, this petition may not be entertained.

6. Before adverting to the facts, certain relevant circulars issued by the Government need to be considered. In the first instance, a circular came to be issued by the then Government of Bombay on September 21, 1955 wherein it has been stated that expression "new tenure" came to be introduced for the first time in 1901 by adding a new provision to section 68 of the Code and under that section, conditions can be attached to the grant and conditions may be inalienability and/or impartibility, or both. It was clarified that mention of words "new tenure" in village form by itself would not indicate that the grant is subject to inalienability and/or impartibility and, therefore, it would not be legally feasible to infer that particular condition either of inalienability or impartibility was attached to the land in each of such cases and, therefore, land can not be forfeited only on the basis of such entries and, therefore, such entry should be made more accurately in village form Nos 6,7 and 12. Attention of this court is also drawn to a subsequent circular issued by the Government of Gujarat on March 16, 1982. The circular is on the same lines as the earlier circular.

7. Now, if the facts of the present case are seen in light of the contentions raised by the parties before this Court, it is to be noted that an inquiry was held into the question of alienability and/or partibility of the land in question. It is found from the order of the Mamalatdar (annexure "E") that despite inquiry and examination of "Prati Book", there is no mention of any conditional or restricted grant of renure. There is nothing to indicate that the land was of new tenure. He has also relied on the circular of the Government to hold that mere mention of a "new tenure" in Villate Form 7/12 would not make the land of a restricted tenure and, ultimately cancelled the Entry No.809.

8. In this regard, similar questions arose before this Court in Special Civil Application No 7878 of 1996 and this Court (Coram: S.D.Dave,J) by decision dated

February 4, 1997, observed thus:-

"....It should not be overlooked that the declaration or the treatment of a piece of land as a new tenure land has got serious repercussions and the right of occupants are being limited in many respects. The new tenure land could not be transferred or alienated without having obtained the prior express permission of the authorities concerned. Moreover, the said land would be required to be utilised and occupied in a manner which is in consonance with the tenure under which the same has been granted. Looking to these serious repercussions which would follow from the factum of making any such entry would oblige everybody concerned to look for the orders of the circumstances in which a particular piece of land is said to be a land of a new tenure.... A perusal of the Government files would go to show that despite the best efforts, the Revenue authorities were not in a position to lay their finger on any order under which this land bearing Survey No.69 could be said to be a land of a new tenure. The matter does not rest here because the Government and the District Survey Officer were trying to find out any order under which such restricted tenure would have been notified in the land revenue records. All the efforts have failed. It appears that the Deputy Secretary, Revenue Department, under a communication dated July 11, 1994 had requested the Collector, Ahmedabad to find out the original of such an entry, but, ultimately, the matter was required to be referred to the Village Talati with a request to find out any such record under which such an entry could have been justified. The Talati-cum-Secretary of village Panchayat also, upon verification of the entire revenue record, was of the opinion that no such entry or order could be located under which the land could be said to be the land of a new tenure".

With these observations, the court directed deletion of the entry indicating the land to be of new tenure.

9. In the instant case also, the learned Mamalatdar had held an inquiry. He got the enquiry made through D.I.L.R to go to the root of entry in question indicating

the land to be of new tenure, but could not find anything and therefore he ordered the entry to be deleted. As has been observed in the earlier decision in Special Civil Application No.7878/96, in the instant case also, in the absence of any material, this entry could not have been taken at its face value to indicate that the land is inalienable and/or impartible as has been done by the learned Collector.

10. In the case of Chhotabhai Dahyabhai Thakore vs State of Gujarat & Ors as reported in 38(3) GLR 2016 this court observed that mere mention of words "new tenure" in the revenue records is not a sufficient proof of inalienability and/or impartibility of the land. There must be additional and reliable proof of this fact. This aspect appears to have been overlooked by the authorities below, namely, the Collector and the Additional Chief Secretary while holding that the lands are impartible and inalienable because they are shown to be of new tenure, although, factually, they have not found or noted any error appeared to have been committed by the learned City Deputy Collector. They have set aside the order only on strength of the entry overlooking the fact that the land is ancestral and that in inquiry no basis for such an entry is found. The orders, therefore, can not be permitted to stand. The petition deserves to be allowed.

11. It would also be not out of place to note that the decision in Special Civil Application No.7878/96 was carried in appeal before the Division Bench of this court in Letters Patent Appeal and the Division Bench after considering the merits was pleased to dismiss the said Letters Patent Appeal being Letters Patent Appeal No.626/97 by virtue of judgment dated 24.8.2000. In Special Civil Application No.7878/96 as well as in Special Civil Application No.10776/98 the entry under challenge was Entry No.809 which is also under challenge in this matter.

12. There is nothing worth name to distinguish the present case from the cases decided in the aforesaid matters and therefore the result of the present petition also must be the same as in the earlier matters.

13. For the foregoing reasons, the petition is allowed. The impugned order passed by the District Collector, Ahmedabad in LB\Review Case No.8/98 on 28/1/1999 at annexure "A" is hereby quashed and set aside. Rule is made absolute with no order as to costs.

15.3.2001 (A.L.DAVE,J)